

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10730 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJESHREE J SHAH

Versus

GENERAL MANAGER (W.R)

Appearance:

MR YN OZA, Sr. Counsel for
MR JAL SOLI UNWALA for Petitioner
MR GN SHAH for Respondent No. 1
MR MC BHATT for Respondent No. 3
MR ND GOHIL for Respondent No. 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-21/06/2001

CAV JUDGEMENT

This petition has been filed for quashing and
setting aside the impugned action of the respondents no.
1 and 2 in awarding Lubricant Petroleum Gas (LPG)

Distributorship to the respondent no. 3 and for restraining the respondent no. 3 from running the aforesaid LPG distributorship awarded to him by the respondents no. 1 and 2, pursuant to the advertisement dated 8-9-1995.

2. An advertisement was published in the daily newspaper dated 8-9-1995 for awarding LPG distributorship of Bharat Petroleum Corporation Ltd. (BPCL or Corporation for short) for the places mentioned in the said advertisement. In the said advertisement eligibility criteria has been provided and one of the clauses of that criteria was that the applicant must be resident of the concerned district for a minimum period of five years immediately preceding the date of the application. As the petitioner was falling within the eligibility criteria, he applied for LPG distributorship for the area "Ahmedabad-A". The applicant was called for interview by the Oil Selection Board vide letter dated 14-3-1996. Interview was held on 27-3-1996 and the petitioner was found qualified for allotment of LPG distributorship. In the interview held on 27-3-1996, 69 candidates out of 81 candidates appeared for the same purpose. The respondent no. 2 - Oil Selection Board found the respondent no. 3 as well as the petitioner qualified and eligible for being allotted LPG distributorship. It is stated that the respondent no. 3 was not resident of Ahmedabad and he obtained false, fake and fabricated residence certificate for being eligible for allotment of LPG distributorship though the respondent no. 3 was resident of District Sultanpur of Uttar Pradesh State. The respondent no.3 has passed High School examination on 30-7-1991 as a regular student. He has also filed the certificate dated 26-9-1995 issued by the Mamlatdar showing that he is resident of Ahmedabad. The respondent no. 3 secured allotment of LPG distributorship on the basis of the false, fake and fabricated documents with regard to resident of Ahmedabad though he was not holding requisite qualifications. Hence, the petitioner has challenged the allotment of LPG distributorship in favour of the respondent no. 3 by the respondents no. 1 and 2 in this petition.

3. By the amendment in the petition, the petitioner has stated that the Oil Selection Board - the respondent no. 2 on the representation made by the petitioner has directed the respondent no. 1 Corporation to investigate the entire matter thoroughly and also recommended for awarding LPG distributorship to the petitioner. In spite of the directions of the respondent no. 2, the Oil Selection Board, the Corporation has not taken any decision as per the Guide Lines of the Government of

India, the recommendation of Oil Selection Board is binding on the respondent no. 1 Corporation. The petitioner filed certain documents with respect to the residence of the respondent no. 3 at Sultanpur, U.P. at the relevant time. Hence, the respondent no. 3 was not an eligible and qualified person for being allotted LPG distributorship.

4. The respondents no. 1 and 2 have filed affidavit-in-reply stating therein that the boards have been appointed state wise for the oil companies; India Oil Corporation Ltd. (IOCL), Bharat Petroleum Corporation Ltd. (BPCL), Hindustan Petroleum Corporation Ltd. (HPCL) and IBP Company Ltd. the Oil Selection Board consists of (i) A retired High Court Judge, Chairman, (ii) a representative of SC/ST/other weaker section - member and (iii) a prominent public figure Member. It is also asserted that in some of the petitions, this Court has upheld the selection procedure and held in clear term that the High Court cannot sit in appeal over the decision of the Oil Selection Board. In some of the writ petitions, this Court vide its judgment dated 5-12-1985 held that what type evidence would be acceptable as sufficient proof for adjudging the eligibility criteria is within the domain of Oil Selection Board. Similar view was taken by this Court in some other writ petition. In the present case, 81 candidates were called for the interview by the Oil Selection Board on 27-3-1996 and the petitioner was one of the candidates who were called for interview and selection has been made by the Oil Selection Board on the basis of only merits. After considering all the factors including the certificate etc. Oil Selection Board prepared final merit panel and issued the letter dated 26-11-1996 to the candidates placed at Sr. No. 1 and 2 of such merit panel. If any candidate is called for interview would not automatically make himself eligible for LPG distributorship nor does it confer any right to obtain such distributorship. It is also denied that the petitioner has been discriminated against other candidates.

5. The respondent no. 3 has filed an affidavit-in-reply stating therein that he appeared in the Higher School Examination in March 1990 but he was declared failed and he started to reside with his elder brother at Ahmedabad after appearing in the examination held in March 1990. He had gone to Sultanpur to deposit the fees in the school. At that time, some political agitations were going on and hence he left Sultanpur for Ahmedabad. Earlier, the school was opened only for seven

days in August 1990. The respondent no. 3 had gone to Sultanpur on or about 14-1-1991 and attended the school for four days only. In the month of February, 1991 he attended the school for five days. Thus, the school was closed for the concerned standard and hence the respondent no. 3 left Sultanpur for Ahmedabad. The examination was conducted in May, 1991. The respondent no. 3 appeared at the examination and immediately after appearing at the examination he came back to Ahmedabad. He has prepared a chart showing his presence from July 1990 to March 1991 and also annexed that chart with his affidavit-in-reply. He has also produced voters list and the places where the respondent no. 3 is said to be a resident of Sultanpur but his name does not appear as a voter in that list. Various letters were sent by his father to the respondent no. 3 and by the respondent no. 3 to his father have been produced in this case in order to show that the respondent no. 3 was residing in Ahmedabad. As the respondent no. 3 had gone to Sultanpur only on few occasions it does not mean that he becomes resident of Sultanpur. Thus, the respondent no. 3 was residing at Ahmedabad prior to July, 1991.

6. Further affidavit-in-reply has been filed by the respondent no. 3 along with 52 postal communications showing that the respondent no. 3 was residing at Ahmedabad and not at Sultanpur at the relevant time. The term "Ordinary resides" would mean as mentioned in Section 20 of the Representations of the People Act, 1950, temporary absence from Ahmedabad does not amount to cease to be an ordinary residence of Ahmedabad. It is also pointed out that the Oil Selection Board was banned by the Government of India with effect from 15-5-1996 to 4-3-1997 and the Oil Selection Board was dissolved from 5-3-1997 and new Board was designated as "Dealers Selection Board with effect from 1-4-1997. Thus, the Oil Selection Board could not have taken any decision and sent any communication from 15-5-1996 onwards.

7. Another additional affidavit was also filed in order to show that the matter is sub-judice and hence the Oil Selection Board could not have taken any decision without issuing any notice to the respondent no. 3 and without affording any opportunity of being heard to him, no decision adverse to him could be taken by the Oil Selection Board.

8. After taking into consideration the Oil Selection Board becomes functus officio and the Oil Selection Board could not have passed any order or taken any decision. The petitioner also filed further affidavit dated

9-1-2001 stating therein that the impugned action of the respondents no. 1 and 2 in awarding LPG distributorship to the unqualified person - respondent no. 3 is without following eligibility criteria. On 3-3-1997 the respondent no. 2 - Oil Selection Board issued a letter to the respondent no. 1 which shows the arbitrary and discriminatory attitude on the part of the respondents no. 1 and 2. The said letter dated 3-3-1997 states as under :

"On a scrutiny of the application No.7605, it is evident that Shri Sandip Pratapsing, in the year 1991 the candidate was studying in Sultanpur, hence it is further clear by the Certificate No.0676793 (32/056/3206759) Sl. No.0751731 issued by Madhyamik Shiksha Parishad, Uttar Pradesh Board (Board of High School and Intermediate Education, UP, and he was regular candidate of Govt. Intermediate College, Sultanpur on 30th July, 1991 and passed in IInd Division. It is also very clear that the candidate is not residing in Ahmedabad and not fulfilling the conditions of 5 years as prescribed in the Manual of OSB.

You are requested to please investigate the entire matter thoroughly and the candidate selected as No. 2 may be awarded the distributorship."

9. The petitioner submitted the application to the Police Inspector, Naroda Police Station, Ahmedabad city for verifying and inquiring as to whether the respondent no. 3 was residing at the address given by the respondent no. 3 in his application for awarding distributorship. It is also stated by the petitioner that necessary certificate to that effect be kindly issued to the petitioner. After due inquiry the Police Inspector of Naroda Police Station, Ahmedabad City has given the certificate to the effect that the respondent no. 3 was not residing at the address mentioned in the said certificate since 1990 till 2000. The petitioner also made an application to the Mamlatdar for verifying the matter. After due inquiry by the Talati, and panchanama drawn by him dated 5-12-2000 wherein it is stated that the respondent no. 3 has not been residing at the address mentioned in the application since last 10 years. The City Mamlatdar, Ahmedabad has issued the certificate on the basis of the panchanama prepared by the Talati.

10. The petitioner also sent a Regd. A. D. letter to the respondent no. 3. But the said letter came back with an endorsement that the person named on the envelope was not residing at the said address. Thus, the respondent no. 3 was not residing at the address given in the application for LPG distributorship since last 10 years. With a view to get LPG distributorship the respondent no. 3 misrepresented the Corporation though he was not eligible to get the LPG distributorship.

11. Affidavit-in-reply against the further affidavit of the petitioner dated 9-1-2000, was filed by the respondent no.3 stating therein that once the decision is taken by the Oil Selection Board, it becomes functus officio. It is not a permanent body and therefore after taking decision to allot LPG distributorship to the respondent no. 3 no question arises for further decision being taken by the Oil Selection Board. The Deputy Coordinator has no authority whatsoever to give any opinion on behalf of the Oil Selection Board.

12. It is also stated the application dated 7-2-2000 submitted to the Police Inspector of Naroda Police Station by the petitioner and the certificate dated 18-2-2000 issued by the said Police Inspector are improper and illegal. The dispute involved is not within the jurisdiction, power and authority of the Police Inspector. The dispute between the petitioner and the respondent no. 3 is purely of civil nature and the Court has only power to decide the dispute involved in the petition. It is submitted by the respondent no. 3 that during the pendency of the petition, the petitioner ought not to have made request to the Police Inspector to make an inquiry and to give or express any opinion on the issue involved in the present petition. The Police Inspector has no power or authority to issue such certificate and process of issuing certificate is nothing but a managerial affairs. The applications made by the petitioner to the police inspector and Mamlatdar and panchanama and certificates issued and those documents are inadmissible in the evidence and the petitioner ought not to have made the application to the City Mamlatdar, Ahmedabad during pendency of the petitioner to make inquiry and the City Mamlatdar had no concern to issue a certificate to that effect. Thus, the panchanama and issuance of the certificate by the Talati and Mamlatdar is nothing but favouritism. The Police Inspector and the Mamlatdar have made inquiry regarding the respondent's residence in February, 2000 and December, 2000 which is totally irrelevant and extraneous. Thus, the question of respondent no. 3's residence in the year 2000 is not

relevant for determining the issue. The respondent no. 3 has already informed the respondent Corporation regarding change of his address by the letter dated 11-12-2000 and the respondent no. 3 has ceased to reside at Sultanpur, U.P. since November 1990. Thus, the certificate issued by the Police Inspector, Naroda Police Station, Ahmedabad and the City Mamlatdar, Ahmedabad are irrelevant. The respondent no. 3 had applied for issuance of the driving licence and the licence was issued on 8-1-2001 wherein a new address has been given. It is submitted that the annexures produced by the petitioner are inadmissible in evidence.

13. I have heard the learned counsel for the parties and carefully perused the material on record. The learned counsel for the petitioner contended that the respondent no. 3 has misrepresented and committed fraud on the respondents no. 1 and 2 for obtaining LPG distributorship. Hence, allotment of LPG distributorship made in favour of the respondents no. 3 should be quashed and set aside. It is further submitted that the respondent no. 3 was not falling within the criteria of the respondents prescribed in the terms of the advertisement. As such, the allotment of LPG distributorship made in favour of the respondent no. 3 is liable to be quashed and set aside. It is also submitted that after going through the investigation and inquiry the Oil Selection Board has directed the respondent Corporation to allot LPG distributorship to the petitioner.

14. On the contrary, the learned counsel for the respondent no. 3 contended that the respondent no. 3 was resident of Ahmedabad at the relevant time as prescribed in the advertisement. Mere absence for few occasions will not treat the respondent no. 3 as nonresident of Ahmedabad. It is also submitted by the learned counsel for the respondent no. 3 that during pendency of the matter in this Court the Oil Selection Board had no power or authority at all to cancel the LPG distributorship made in favour of the respondent no. 3 and to allot the same to the petitioner. The certificate issued by the City Mamlatdar, Ahmedabad as well as the Police Inspector, Naroda Police Station, Ahmedabad are inadmissible in the evidence and the Oil Selection Board was incompetent to direct the respondent Corporation to allot LPG distributorship to the petitioner on the basis of the inadmissible evidence i.e. the aforesaid certificate.

15. The learned counsel for the respondent no. 3 also relied on the decision of the Calcutta High Court in

the case of Chinmoy Sarkar and etc. Vs. Md. Shaniat Hussain and etc. reported in AIR 1990 Calcutta 412, wherein it is held that after considering the materials on record including the Field Investigation Report, the Board prepared a panel according to merit and forwarded the same to be Corporation. The panel consisted of S, the writ petitioner and P, the names having been arranged in the order of merit. Pursuant to the receipt of the panel, the Letter of Intent was issued in favour of S by the Corporation. On writ petition by the writ petitioner the writ petition was allowed and the final direction therein given rested on two findings first, that proper consideration as not given to the candidature of the Writ Petitioner and that of S and P with due regard to facts and to the Field Investigation Report and, secondly that whereas the Writ Petitioner satisfied the eligibility criteria S failed to do so since he could not establish the conditions of appointment relating to financial capability and availability of a suitable plot of land. On appeal by S the Board and the Corporation : it was Held (i) that the Trial Court, erred in regarding those two factors, viz. financial capability and availability of a plot of land, as eligibility criteria in respect of appointment of Dealership/Distributorship. These factors are not the sole factors to be taken into consideration, though important, they are not the determinative factors. In the process of selection, many other factors such as educational/professional qualifications, selling and supervisory experience, business acumen, etc. have a play. These various things would require to be weighed and the selection has to be made ultimately by balancing those various factors and making a comparative assessment of the merits of the competing candidates. This process of appreciating and weighing various factors and materials and rival merits is the function of the Oil Selection Board which is expected to have the necessary expertise and experience. There cannot be any reappraisal or reappraisal of these materials and factors or their relative weighing or evaluation of the comparative merits of the competing candidates by the High Court in Writ Jurisdiction.

16. It is a matter in which according to the petitioner the respondent no. 3 has misrepresented and committed fraud in placing fake, fabricated and false documents with regard to residence of the respondent no. 3 before the respondents no. 1 and 2. The respondents no. 1 and 2 allotted LPG distributorship to the respondent no. 3 on the basis of the false, fabricated and fake documents as alleged by the petitioner and allotted LPG distributorship to the respondent no. 3.

17. No doubt this court has no jurisdiction to reappraise the material or evidence or record filed by the parties in respect of the residence of the respondent no. 3. It is departmental proceeding which does not require to be decided in accordance with rule of the evidence. It is absolute discretion of the respondents no. 1 and 2. This Court should not interfere with the discretion exercised by the respondents no. 1 and 2. However, I would like to mention here that I have come across with various cases in which allotment of distributorship of LPG or dealership of outlet is made only on the basis of the Income Certificate in respect of the candidate and that income certificate must show that the income of the candidate is less than Rs.50,000/- p.a. The intention of the Committee is different from the intention apparent from the terms and conditions of the advertisement for allotment of dealership. Such dealership are being allotted to the person having property or status of more than crores of rupees except in the case of the reserved category, for the candidates belonging to the SC/ST/OBC/Handicapped persons. The benefit is being given to the person having property or status of more than crores of rupees. Noble intention is to provide employment to the unemployed person which has to be worked out in the modern system. For this purpose, some guidelines ought to have been provided or prescribed by the respondent Corporation itself. We have also come across with the cases where allotment of distributorship or dealership of LPG or outlet as the case may be, has been made in favour of one person and then he sells out the same to some other person privately and secretly for obtaining huge profit ostensibly involving other person as a partner to run dealership or distributorship in the name of partnership firm. After some time, the person in whose name dealership/distributorship was initially allotted, withdraws himself as a partner of the partnership and thereafter by secret sale transaction by involving other person in the partnership or deleting the original partner from the partnership or making or providing a person as managing partner of the dealership or distributorship, in such case dealership or distributorship should not be permitted. For this purpose, there must be some stringent guidelines to be observed by the Corporation itself. There is well known and debated case of allotment of distributorship/dealership of LPG or outlet by exMinister Captain Mr. Satish Sharma who had illegally allotted number of outlets and LPG distributorship to his relatives and other political persons.

18. In the present case, it appears that there are

certain allegations with regard to the residence of the respondent no. 3. Oral evidence is not required to be taken into consideration in the inquiry conducted either by the department concerned or by any authorized person for that purpose. It is a sole discretion of the respondent Corporation or Company concerned to fix or frame stringent guidelines or criteria and on the basis of those guidelines/criteria the Oil Selection Board is required to recommend the name of the person/candidate for this purpose.

19. In the present case, at one point of time LPG distributorship in question was allotted to the respondent no. 3 and thereafter vide letter dated 3-3-1997 the candidate selected at Sr. No. 2 (present petitioner) in the selection list prepared by the Oil Selection Board was directed to be awarded to him. At one time, LPG distributorship was directed to be allotted to the respondent no. 3 and next time the same was directed to be allotted to the present petitioner. In the facts and circumstances of this case as the jurisdiction of the Board was doubtful for allotting LPG distribution to the petitioner, I do not think it just and proper to interfere with the findings of the respondents and to recommend any of them for allotment of the same. However, I can definitely say that the allotment of LPG distributorship made in favour of the respondent no. 3 should not be made in favour of the petitioner but the same should be allotted to the heirs or dependents handicapped soldiers or soldiers who have sacrificed themselves during the war of Kargil or any other war who died protecting the Boarder's security. I, therefore, direct the respondents no. 1 and 2 to readvertise the advertisement for allotment of LPG distributorship for the heirs of the soldiers of Kargil war or any other war who died or for the injured solders who were injured during the maintenance of security on the boarder of the country.

20. With the above observation, this petition deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated forthwith.

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/JVSatwara/

